IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.8.2010

CORAM

THE HONOURABLE MR.JUSTICE K.N.BASHA

Crl.A.No.991 of 2006

Rangesh .. Accused / Appellant

Vs

State by Inspector of Police,
Pallavaram Police Station,
Chennai
(Crime No.415/2003) .. Complainant / Respondent

Prayer: Criminal Appeal filed against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court-I), Chengalpattu dated 7.11.2006 made in S.C.No.317/2005

For Appellant : Mr.R.Vijayakumar
For Respondent : Mr.S.Senthilmurugan
for Mr.J.C.Durairaj, GA (Crl.Side)

J U D G M E N T
"Children are the world's most valuable resource and its best hope for the future" – John Fitgerald Kennedy (American 35th US President).

"Child abuse casts a shadow the length of a lifetime" – Herbert Ward.

The appellant/accused, a Physical Training Teacher of a School, who has been tried and convicted for the offence under Section 376(2)(f) IPC and sentenced to 10 years rigorous imprisonment with a fine of Rs.5,000/- in default to undergo 1 year rigorous imprisonment on the allegation of committing heinous crime of rape on a 9 years old school girl, has come forward with this appeal questioning the legality of the judgment of the learned Additional District and Sessions Judge (Fast Track Court -I), Chengalpattu dated 7.11.2006 made in S.C.No.317/2005.

2. The prosecution case in a nutshell is hereunder:
2.1. The accused was working as a Physical Training Teacher in a School at Chennai. PW1, aged about 9 years was studying 4th standard in the same School.

2.2. On 17.6.2003, the accused conducted physical training class in the school playground. The students participated. The accused taken PW1 separately from the ground to the toilet and asked her to find out whether water is coming in the tap. Thereafter, he has asked her to remove her clothes and committed rape on her. PW1 struggled for breathing and asked for water. The accused taken water from the bathroom and gave it to her and also threatened that she should not disclose

this to anyone otherwise he would kill his father and mother. PW1 not disclosed to anyone out of fear. She returned to her house at 4.00 p.m. She felt uneasiness. She was taken to a Doctor, PW8. PW1 informed that she was having burning sensations while passing urine. The Doctor gave some antibiotic medicines.

2.3. Again PW1 was subjected to sexual assault by the accused while she had attended the physical training class in the ground on 2.7.2003. As she fell ill and she was taken to the Doctor, PW8 on 6.7.2003. On examination, the Doctor, PW8 found swelling and PW1 complained pain in her private part. The Doctor also found fungus infection in it. On enquiry PW1 informed PW8 that she was subjected to sexual assault by her Physical Training Teacher/accused. PW1 also informed PW2, her father about the occurrence took place on 2.7.2003 and also informed him about the threat given by the accused.

2.4. PW2 went to Pallavaram Police Station on 7.7.2003 and gave a report, Ex.P1 to PW9, the Inspector of Police. He registered the case in Crime No.415/2003 for the offence under Sections 376 IPC. Ex.P11 is the F.I.R.

2.5. PW9 went to the scene of occurrence and prepared Observation Mahazar Ex.P2 in the presence of PWs.5 & 7. He prepared the Rough Sketch, Ex.P12. He examined PWs.1 to 4. He has made a requisition to the Court under Ex.P3 for sending PW1 for medical examination. On the same day he has arrested the accused at the School and produced before the Court for remand. He has also made a requisition under Ex.P8 for sending the accused for medical examination. He has sent the victim as well as the accused for medical examination as per Court order. He examined the Doctor, PW8.

2.6. PW6, the Doctor attached to Madras Medical College Hospital examined PW1 on 10.7.2003. On examination, PW6 found that the victim was moderately nourished and secondary sexual characters are not developed. She has found the following injuries:

Examination of private parts:
Vulva .. Normal.

Vagina .. Admits tip of finger

Reddish bruising around the orifice of
the hymen on the right and left side.
Laceration in the vaginal mucosa
< x 1/8th cm on the left side.

Hymen .. Partly healed laceration in 3 &
9' O clock position.
Inflammed and painful on touch.

Perinium .. Intact
Cervix .. Normal
Fourchette .. Normal
Ex.P5 is the Medical Certificate issued by PW6. She has also issued the Certificate under Ex.P6 regarding the age of the victim as, she was above 9 years but below 11 years.

2.7. The Doctor, PW7 attached to Madras Medical College examined the accused on 10.7.2003. He has issued the Certificate, Ex.P10 stating that there is nothing to suggest that he is impotent.

2.8. PW9, the Inspector of Police, examined the Doctors, PWs.6 to 8 and received the reports Exs.P5, P6 and P10. On completion of investigation, he has laid the charge sheet against the accused on 17.9.2003 for the offence under Sections 376(2)(f) IPC.

3. The prosecution in order to bring home the charge against the accused, examined PWs.1 to 9 and filed Exs.P1 to P12.

4. When the accused was questioned under Section 313 of the Criminal Procedure Code, in respect of incriminating materials appearing against him, through the evidence adduced by the prosecution, he has come forward with the version of total denial. He has examined DWs.1 & 2 on his side.

5. Mr.R.Vijayakumar, learned counsel appearing for the appellant, while assailing the impugned judgment of conviction, vehemently contended that the prosecution has miserably failed to prove its case by adducing clear and consistent evidence and put forward the following contentions:
(i) There is an unexplained delay in giving report to the police.

(ii) There are contradictions in materials particulars between the evidence of PWs.1 to 4.

(iii) The Doctor, PW8 has not opined that PW1 was subjected to rape and she has stated that PW1 was having fungal infection and that could be due to some other reason.

(iv) The evidence of PW1 is unbelievable, as the occurrence could not have taken place while she was attending the physical training class in the ground as it would have attracted other students.

(v) The physical appearance of the victim after the occurrence does not disclose that she was subjected to rape.

(vi) The Doctor, PW6 examined the victim only five days after the occurrence and as such no weightage could be attached to the evidence of PW6 than that of the evidence of PW8, who has examined the victim immediately.

(vii) There are variations between the evidence of PW2 and his report, Ex.P1.

(viii) The evidence of the Doctor, DW2, who is a competent witness to speak about the nature of injury said to have been sustained by the victim, made it clear that PW1 was not subjected to rape. Even accepting the prosecution case to be true, only the offence of outraging the modesty of the prosecutrix, PW1 is made out against the appellant and as such, the learned counsel for the appellant pleaded for leniency in sentence stating that the appellant has studied L.L.M. etc.

6. Per Contra, Mr.S.Senthilmurugan, learned Counsel appearing for Mr.J.C.Durairaj, learned Government Advocate (Crl.side) submitted that the prosecution has proved its case by adducing clear and cogent evidence through PWs.1 to 4. It is submitted that the evidence of PWs.1 to 4 is corroborated by the medical evidence through the Doctors, PW6 and PW8 as they have found injuries to substantiate the prosecution version. It is contended that the Medical Certificate, Ex.P5 discloses the injuries sustained by PW1 and as such the version of PW1 is also corroborated by the medical evidence. It is pointed out that the victim being a tender girl aged about 9 years, it is not possible for her to resist and fight against the commission of rape by the accused and as such there may not be change in her physical appearance to indicate that she has suffered sexual assault at the hands of the accused. It is contended that PW1 was also threatened by the accused and as such she has not disclosed the same immediately to her parents. Therefore, it is submitted that the prosecution has proved its case in all aspects against the accused.

7. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and perused the impugned judgment of conviction.

8. The prosecution heavily placed reliance on the evidence of prosecutrix, PW1 and her father, PW2, coupled with the medical evidence through the Doctors, PWs.6 & 8. The prosecutrix is a child aged about 9 years and she was studying 4th standard at the time of occurrence. The accused was working in the same School as Physical Training Master. The occurrence is said to have taken place while she was attending physical training class in the playground of her School, from where she was taken separately by the accused to a bathroom and thereafter committed rape on her.

9. Before evaluating, analyzing and assessing the evidence of the prosecutrix, PW1 and her father, PW2 and the medical evidence through the Doctors, PWs.6 & 8, to test the credibility of their version, it is relevant to refer the principles laid down by the Hon'ble Apex Court in respect of reliability of the evidence of the prosecutrix.

10. The Hon'ble Apex Court in Sudhansu Sekhar Sahoo v. State of Orissa reported in AIR 2003 SC 2136, held that if testimony of the prosecutrix inspires the confidence in mind of the Court it can be made sole basis for convicting the accused.

11. The Hon'ble Apex Court in Bhupinder Sharma v. State of Himachal Pradesh reported in AIR 2003 SC 4684, has held as under:
"To insist on corroboration except in the rarest of the rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insulted womanhood. It would be adding insult to injury.....

12. In State of M.P v. Dayal Sahu reported in 2005 CRI.L.J. 4375, the Hon'ble Apex Court has held as under:
"Once the statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be passed only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case, if the statement of the prosecutrix and other prosecution witnesses inspire confidence."

13. In yet another decision, the Hon'ble Apex Court in State of Maharashtra v. Chandraprakash Kewalchand Jain with Stree Atyachar Virodhi Parishad, Maharashtra State v. Chandraprakash Kewalchand Jain, Police-Sub-Inspector, Nagpur and another reported in AIR 1990 SC 658, has held hereunder:
"16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness or no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration...."

14. Let me now analyze and assess the evidence of the prosecutrix, PW1 with the touchstone of the principles laid down by the Hon'ble Apex Court in the decisions cited supra in respect of the reliability of the sole testimony of the prosecutrix.

15. The perusal of the report Ex.P1 reveals that PW1 was subjected to sexual assault even prior to 2.7.2003 i.e., on 17.6.2003. The report, Ex.P1 was given by PW2, the father of the prosecutrix, PW1. The perusal of the evidence of PW1 discloses that she has spoken about the occurrence took place on 2.7.2003 and the reading of her evidence reveals that she has come forward with the clear and consistent version and her evidence is also quite natural. The version of PW1 before the Court through her evidence discloses the commission of offence of rape on her by the accused. She has also stated that after the commission of rape, the accused also threatened her with dire consequences, if she discloses the same to anyone. The accused also threatened that he would kill her father and mother if she discloses the same to anyone. PW1 having frightened with such threatening of the accused has not disclosed the occurrence to anyone immediately, but when she returned to her house, she felt uneasiness and she became ill and she was taken to the doctor by her father, PW2. The narration of events took place on the fateful day of occurrence is also quite natural. This Court has no hesitation to hold that the evidence of PW1 inspires the confidence of this Court.

16. It is seen that the evidence of PW1 is also corroborated by the evidence of PW2, her father. It is the categorical version of PW2 that PW1 fell ill on 17.6.2003 and as such she was taken to the Doctor, PW8 by PW2. The version of PW2 is also corroborated by the version of the Doctor, PW8 as she has stated that PW1 was brought to her 17.6.2003 and PW1 complained burning sensations while passing urine and the Doctor, PW8 has given some antibiotic medicines. As PW1 fell ill even on the date of occurrence, again she was taken to the Doctor, PW8 and only at that time PW1 stated to the Doctor that the accused committed rape on her and PW1 also informed the same to her father, PW2 for the first time and the Doctor, PW8 advised them to take PW1 to the Government Hospital. The version of PW1 is further corroborated by the version of PW3, the sister of PW1 as well as PW4, the landlady of PWs.1 & 2.

17. The prosecution also examined the Doctor, PW6 attached to the Madras Medical College Hospital. PW6 examined the prosecutrix, PW1 on 10.7.2003. Ex.P5 is the Certificate issued by the Doctor, PW6 for sexual offences. The perusal of Ex.P5 reveals that the victim, PW1 sustained the following injuries.
Vagina .. Admits tip of finger

Reddish bruising around the orifice of
the hymen on the right and left side.
Laceration in the vaginal mucosa
< x 1/8th cm on the left side.

Hymen .. Partly healed laceration in 3 &
9' O clock position.
Inflammed and painful on touch.
The above injuries make it crystal clear that there was an injury found in the hymen namely partly healed laceration and found to be inflammed. Therefore, the Doctor, PW6 has categorically stated that the prosecutrix, PW1 was subjected to sexual assault.

18. The Hon'ble Apex Court in one of the decisions cited supra has categorically held that if the evidence of the prosecutrix inspires the confidence of the Court, it can be acted upon even in the absence of medical evidence. As far as the case on hand is concerned, as already pointed out that

the evidence of PW1 not only inspires the confidence of this Court but her version is also corroborated by other evidence available on record through PWs.2 to 4 and as well as through the medical evidence of the Doctors, PWs.6 & 8.

19. The learned counsel for the appellant made a feeble attempt to contend to the effect that even assuming the accused indulged in sexual assault on PW1, the same would attract the offence of outraging the modesty of the victim on the ground that the accused could have indulged in fingering, as the medical evidence discloses that the vagina admits only tip of finger. This Court is not able to countenance the contention of the learned counsel for the appellant on the simple ground that the Certificate, Ex.P5 also reveals a laceration on the vagina.

20. At this juncture, it is relevant to refer the decision of the Hon'ble Apex Court in Aman Kumar and Another v. State of Haryana reported in 2004 SCC (Cri) 1266, wherein the Hon'ble Apex Court has held hereunder:
Even a slight penetration in vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact."
The evidence available on record as stated above coupled with the principle laid down by the Hon'ble Apex Court in the decision cited supra would make it crystal clear that the prosecution has proved its case beyond reasonable doubt that the accused has committed the heinous crime of rape on the minor child, PW1.

21. The learned counsel for the appellant also contended that there is an inordinate delay in giving report to the police. It is to be stated that the victim is a small child aged about 9 years and she was also threatened by the accused as not to disclose to anyone about the occurrence and she was also threatened by the accused that her father and mother would be killed if she disclose about the occurrence to anyone. Therefore, it is quite natural that PW1 having frightened due to the threat of the accused could not have informed anyone about the occurrence, but the fact remains that she felt uneasiness and she fell ill and she was taken to the Doctor and ultimately she has disclosed about the commission of rape on her by the accused not only to the Doctor, PW8, a private medical practitioner but also to the Doctor, PW6, attached to the Madras Medical College and PW6 also recorded the such statements of PW1 in Ex.P7 to the effect that the victim was subjected to rape by the accused. It is pertinent to note that the victim was subjected to rape for the second time on 2.7.2003 and she was taken to the Doctor, PW6 on 10.7.2003 and the report was given even prior to the medical examination by the Doctor, PW6 on 7.7.2003. Therefore, it cannot be stated that there is any inordinate delay in giving report to the police.

22. At this juncture, it is relevant to refer the decision of the Hon'ble Apex Court in Dildar Singh v. State of Punjab reported in 2006 AIR SCW 4247, wherein the Hon'ble Apex Court has held hereunder:
"In normal course of human conduct an unmarried girl who is a victim of sexual offence would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report."
The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable

to the facts of the instant case as in this case also there is no inordinate delay. Even assuming that there is some delay, it is only due to the threat said to have been given to the victim by the accused and other circumstances.

23. The learned counsel for the appellant pointed out that the physical appearance of the prosecutrix does not disclose that she was subjected to rape. This Court is not able to countenance such contention of the learned counsel for the appellant. Here is a case, wherein the prosecutrix, who is a child, has been subjected to sexual assault mercilessly. It is impossible for PW1 to resist or struggle with the accused. PW1 was also threatened by the accused as not to disclose to anyone. Therefore, PW1 hided everything and left for her residence. The learned counsel for the appellant also placed reliance on the evidence of the Doctor, DW2 to contend that the injuries found on the prosecutrix would not constitute offence of rape. The perusal of the evidence of DW2 reveals that he has categorically stated that if a child is subjected to rape, the injuries may vary depending upon the force including the mental condition and hastiness in committing the rape. The Doctor, DW2 categorically admitted to a question put by the Trial Court that the injuries sustained by the prosecutrix could have been caused under the above said circumstances.

24. Last but not the least submission made by the learned counsel for the appellant is in respect of reducing the sentence stating that the appellant has studied L.L.M etc. It is to be stated that the trial Court has imposed a minimum sentence of ten years for the offence under Section 376(2)(f) IPC. Of course, there is also proviso to Section 376(2) to the effect that for adequate and special reasons to be mentioned in the judgment, the Court is entitled to impose less than the minimum sentence, but as far as the case on hand is concerned, this Court is not able to find any mitigating circumstances or any adequate or special reasons to reduce the sentence. It is to be stated that the offence of rape is not only against an individual, but also against the society. In the instant case, the prosecutrix, a child aged about 9 years was mercilessly subjected to rape by her own Physical Training Master in the School.

25. It is relevant to the observations of the Hon'ble Apex Court in a recent decision relating to a teacher misbehaving with girls in the classroom. The Hon'ble Apex Court in that decision observed as follows:

".....the role of the teacher is of great importance. The teacher, who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like a "Rishi" and as loco parentis and such is the duty, responsibility and charge expected of a teacher. But the applicant, by his conduct betrayed the trust and forfeited the faith of the students and parents."

26. Similarly, in the case on hand, the appellant being a Physical Training Teacher, has betrayed the trust and forfeited the faith of the students and parents in view of the commission of the above said offence. Such being the position, this Court is of the considered view that there is no two opinion that the heinous crime committed by the appellant should be dealt with an iron hand. In view of the same, this Court is of the considered view that the appellant is not entitled to the relief of reduction of sentence.

27. In view of the aforesaid reasons, this Court is of the considered view that the impugned judgment of conviction does not suffers from any infirmity or illegality. The appellant has been rightly found guilty by the Trial Court. Accordingly, the appeal is dismissed and the conviction and sentence imposed by the learned Additional District and Sessions Judge (Fast Track Court-I), Chengalpattu by the judgment dated 7.11.2006 made in S.C.No.317/2005 is hereby confirmed.

28. Before parting with this matter, this Court is constrained to state that the child abuse is alarmingly increasing day by day. It is shocking to note that child abuse cases particularly increasing in Schools. According to National Commission for Protection of Child Rights (NCPCR), the number of complaints on child excesses in schools, which includes acts of sexual abuse, harassment, humiliation, murder, corporal punishment and wrongful confinement has nearly tripled in the past three years. With 34 complaints in 2007-2008 and 68 in 2008-2009, the child right's panel saw a surge in complaints last year and received 95 complaints in 2009-2010 (till date), from 21 states. As far as the state of Tamil Nadu is concerned, NCPCR has received 12 complaints.

29. It is needless to state that sexual abuse of children is one of the most heinous crimes. It is very unfortunate to note that the victim of such heinous crimes are suffering in dark and in silence.

30. It is pertinent to note that the following are the major findings on sexual abuse in India by the Study, Child Abuse, India, 2007:
(i)53.22% children reported having faced one or more forms of sexual abuse;
(ii)21.90% child respondents facing severe forms of sexual abuse and 50.76% other forms of sexual abuse;
(iii) 50% abuses are persons known to the child or in a position of trust and responsibility;
(iv)Most of the children did not report the matter to anyone;

31. A report by the Ministry of Women and Child Development in India (supported by Save the Children and UNICEF) shows its major findings in respect of child abuse as hereunder:
(i)Persons in trust and authority are major abusers;
(ii)5-12 year old children are in the high risk category: across the forms of abuse;
(iii)70% of the children have not reported abuse to anyone;
(iv)More than half of the child respondents reported facing one or more forms of sexual abuse;

32. As far as the state of Tamil Nadu is concerned, this Court is constrained to place it on record its appreciation to the Child Welfare Committee, Chennai, constituted under Section 29(i) of Chapter III of the Juvenile Justice (Care and Protection of Children) Act, 2000, for rendering commendable service to fight against child abuse and to protect children from child abuse of various forms.

33. This Court is also constrained to highlight the services rendered by Childline India Foundation (C.I.F) founded in June 1996. CHILDLINE is a national, 24-hour, free emergency telephone helpline and out-reach service to help a child in distress between the age group of 0-18 years and provides interventions related to rescue, shelter, medical aid, repatriation, sponsorships and emotional support and guidance. The CHILDLINE number 1098 is a toll free number that is common in all cities in India. At present, BSNL, Chennai Telephones, Vodafone, Airtel, Aircel, Reliance Communication and TATA Indicom have provided free connectivity to '1098'. CHILDLINE is currently operational in 84 cities, which includes 10 cities in Tamil Nadu functioning at Chennai, Madurai, Tiruchirapalli, Coimbatore, Salem, Tirunelveli, Kanniyakumari, Cuddalore, Nagapattinam and Kancheepuram (Mahabalipuram), managed by the Non-Governmental Organization with the financial support from the Government of India. The Commissioner of Social Defence is the Chairperson of Chidline Advisory Board of Chennai Childline.

34. It is to be reminded that as early as in the year 1974, the Government of India adopted a national policy for children, declaring the nation's children as Supremely Important Assets. Therefore, it is the responsibility and obligation of the State and Central Government to protect the interest of the children. It is seen that the Law Ministry of the Government of India has taken steps to introduce a bill to effectively deal with the sexual offences against children in the Parliament. It is needless to state that a special law is mandatory for combatting the menace of child sexual abuse.

jvm

To

1.Additional District and Sessions Judge
(Fast Track Court-I),
Chengalpattu

2.The Public Prosecutor,
Madras High Court